HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

LPA No.: 73 of 2007
Reserved On: 31.10.2007
Decided on: 28.11.2007

Gabriel India Limited .....Appellant.

Versus

Gabriel Employees Union and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? Yes.

For the appellant: Mr.P.S.Patwalia, Senior Advocate, with Mr.Dushyant Dadhwal, Advocate.

For respondent No.1: Mr.V.D. Khidta, Advocate.

Per V.K. Ahuja, J:

This is an LPA filed by the appellant against the judgment passed by the learned Single Judge on 22.6.2007 setting aside the order passed by the Appellate Authority, dated 5.4.2006, and upholding the order of the Certifying Officer, dated 29.8.2005. Being aggrieved by the said order passed by the learned Single Judge, the present LPA has been filed by the appellant.

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[1]. Whether reporters of Local papers may be allowed to see the judgment? Yes.

Briefly stated the facts of the case are that appellant/Company had submitted a draft proposal for the modification of Standing Orders for certification on 18.6.2005. On submission of the Draft Standing Orders, the Certifying Officer (Joint Labour Commissioner)/respondent No.2 sent a letter to the respondent No.1/Union for filing objections, which were filed by it. The appellant/Company filed counter to the objections filed by respondent No.1/Union. After hearing the parties, respondent No.2 Certifying Officer, vide his order dated August 29, 2005, certified that the age of retirement of the workmen/employees on attaining the age of superannuation shall be on the completion of 60 years by the employees in accordance with the provisions of Model Standing Orders, as amended up-to-date. An appeal was preferred by the appellant before the Appellate Authority, who accepted the appeal on 5.4.2006 and set aside the order passed by the Certifying Officer/respondent No.2.

Section 3 of Industrial Employment (Standing Orders) Act, 1946, as amended, reads as under:

> *"**3. Submission of draft standing orders. –** (1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in this industrial establishment.*
> *(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.*
> *(3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.*

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section."

The conditions for certification of Standing Orders are provided under Section 4 of the aforesaid Act, which reads as under:

"4. Conditions for certification of standing orders. – *Standing orders shall be certifiable under this Act if –*

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act;

and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders."

Under Section 5 of the aforesaid Act, there has to be certification of standing orders by the Certifying Officer. The relevant provisions of Section 5 of the Act read as under:

5. Certification of standing orders. – *(1) On receipt of the draft under Section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.*

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen."

The Standing Orders duly certified by the Certifying Officer in 1982 provide as under:

> *"The employee shall automatically retire from the services of the company on attaining the age of 55 years in accordance with the date of birth given by him at the time of appointment and as appearing in company's record.*
>
> *The management may at the discretion extend the service of an employee for a period not exceeding one year at a time subject to a maximum of 3 years."*

A perusal of the record shows that the employees of the appellant were governed by the Standing Orders which were duly certified by the Certifying Officer in 1982, as amended, according to which the retirement clause was as under:

> *"According to Item 10-A Clause (3) of the Industrial Employment (Standing Orders) HP Rules, 1973, the age of retirement has been provided as under:*
>
> *The age of retirement of superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer where there is no such agreed age, retirement or superannuation shall be on completion of 60 years of age by the workman."*

It is, therefore, clear that as per the Modal Standing Orders, earlier the age of retirement mentioned was 55 years, but thereafter as per the Model Standing Orders, it shall be 60 years. The age was fixed 55 years in 1995-96 and now by the Certifying Authority on 19.11.1998, the age has been fixed at 60 years.

A combined reading of these provisions shows that firstly, the age has to be considered as per the agreement in between the employer and the employee. Secondly, in case there is settlement, the age has to be fixed as per the settlement and in the third eventuality, the age has to be fixed at 60 years.

It is not disputed by the learned counsel for respondent No.1 that as per the agreement entered into in between the parties, i.e. the employer and the employee at the time of individual employment, it was clearly provided therein that the age of retirement shall be 55 years. In case there is a settlement in between the employees and the employers, the age can be as per the settlement. The question arises as to whether the age of the employee given in the agreement entered into in between the employer and the employee at the time of appointment has to be given effect or the age, as provided in the Model Standing Orders, which was earlier 55 years and now 60 years, in the absence of any settlement to the contrary has to be given effect.

Without expressing any final opinion, prima facie, we are of the view that in case there is an agreement in between the employer and the employee, it has to be followed, but in case there is some settlement because of the intervention of some employees union, the age, as agreed at the time of settlement, has to be given effect. There may be cases when the agreement providing for the age may not have to be followed in case some different criteria is adopted for employees of the same class, say Class-IV, and the agreements provide differently, the agreement may not have to be given effect to and the second condition of settlement or as provided in Modal Standing Orders may have to be followed. However, in the present case, the things have to be considered differently since in a dispute with respondent No.1 for certification of the Draft Standing Orders, a writ petition was filed by the appellant and as per the order passed by a Division Bench of this Court on 23.5.2005, the appellants were permitted to withdraw the petition with liberty to approach the Certifying Officer. The relevant extract of the order reads as under:

> *"The petitioners are permitted to withdraw this petition and also given the liberty to approach the Certifying Officer for certification of the Draft Standing Orders which the petitioners would be submitting to him for certification, for various items contained therein including the item relating to the retirement age of the employees/workmen working with the petitioners. This, however, is subject to the condition that the Draft Standing Orders are submitted to the Certifying Officer respondent No.4 within four weeks from today."*

It is, therefore, clear from above discussion that once the petitioners had agreed to apply before the Certifying Officer for certification of the Draft Standing Orders, this question is not now open to be considered that whether the age has to be considered as per the agreement or as per the settlement arrived at in between the parties since the parties had agreed, specifically the appellants**,** to submit to the jurisdiction of the Certifying Officer in regard to the retirement age and, therefore, the order passed by the Certifying Officer has to be considered ignoring the questions as to whether there was an agreement in between the parties or there was any settlement and the order passed by the Certifying Officer and that of Appellate Authority have to be considered as to whether they are in consonance with law or not.

A perusal of the order passed by the Certifying Officer, dated 29.8.2005, shows that both the parties had submitted their case and the plea of the management was that the age prescribed should be 55 years i.e. the age of retirement. The employees had contended that the age should be 60 years as provided in Item 10-A of Modal Standing Rules prescribing the age as 60 years. The case of both the parties was considered by the Certifying Officer, who passed the following order:

> *"In view of the facts and legal provisions and the Rulings of the Hon'ble Courts, I agree to the Demand of the Union and*

> *accordingly certified that the Age of Retirement of workers/employees, on attaining the age of superannuation, shall be on completion of 60 years by the workmen/employees in conformity with the provision of Age of Retirement as prescribed in Sub-Item (3) of Item 10-A of Schedule 1-A of Model Standing Orders under Rule 3 of the above said Rules framed under Industrial Employment (Standing Orders) Act, 1946."*

By its order dated 5.4.2006, the Appellate Authority, i.e. Presiding Officer, Labour Court, held that the age of retirement has been mentioned in the agreement and it has already been decided by the workmen and the management, as mentioned in the appointment letter given to the workmen, which was extendable upto 3 years by the management. Thus, it was held that since the workman had accepted the terms and conditions and he agreed to work as per the terms and conditions of the appointment letter, which is a contract of service between the management and the workman, the Certifying Officer has wrongly raised the age of retirement to 60 years ignoring the contract of appointment and, therefore, the age of retirement has to be 55 years.

The learned Single Judge had referred to various decisions in coming to the conclusion that the order passed by the Appellate Authority was liable to be quashed and the order of the Certifying Officer referred to above was upheld.

The submissions made by the learned counsel for the appellant were that the learned Single Judge had wrongly set aside the order of the Appellate Authority ignoring the contract of employment in between the parties which was accepted by the employee and, therefore, the age of retirement has to be 55 years. To substantiate his point, the learned counsel for the appellant had relied upon the following decisions:

The decision in **Union of India and others** v. **Bhola Dutt Pandey, (1998) 4 Supreme Court Cases 133,** of the Apex Court shows that the case pertains to an ex serviceman who was appointed as Jem/Clerk in ITBP which was subject to Central Reserve Police Force Rules and the Central Reserve Police Force Act. It was held that the respondent had accepted the terms and conditions of the appointment which made reference to the CRPF Rules and, therefore, Standing Orders were not applicable. Therefore, the retirement age was held to be governed by CRPF Rules.

The decision in **Indian Railway Construction Co.Ltd.** v. **Ajay Kumar, (2003) 4 Supreme Court Cases 579**, was relied upon which is not relevant since the question pertained to the findings of the Disciplinary Authority in departmental inquiry and whether the court could sit as Appellate Authority so as substitute its own view for that of the Disciplinary Authority.

The decision in **Jeewanlal Ltd. v. The Workmen and another, AIR 1972 Supreme Court 1210,** was relied upon which pertained to the age for retirement on superannuation of the employees in Engineering concerns in West Bengal. A perusal of this decision shows that it was observed that the present day tendency is to fix the age of superannuation generally at 60 unless the Tribunal feels that the work of the operatives is particularly arduous or hazardous where workmen may lose efficiency earlier. It was also observed that in engineering concerns in West Bengal, the age of retirement generally fixed for operatives is 58 years. It was also observed that much will depend on the actual assessment of the nature of the work of the operatives to find out whether it is really so arduous or hazardous as to lead to the Certifying Officer or the court in

appeal to the conclusion that the proper age of superannuation should not be raised beyond 58 years.

On the other hand, the learned counsel for respondent No.1 had submitted that the appellant/Company had made the submission before this Court in the writ petition that they will approach the Certifying Officer for certification of Draft Standing Orders with respect to the items contained therein including the item relating to the retirement age of the employees/workmen. Accordingly, this was within the purview of the Certifying Officer to consider the age of retirement considering the Standing Orders and the appointment letters were unilaterally issued in favour of the workmen which cannot be considered in place of settlement or agreement arrived at in between the parties and once the management had accepted and agreed to apply for modification of the Standing Orders by making statement before this Court in the writ petition which was withdrawn, therefore, the plea of the management is not sustainable that the employees cannot raise the demand of raising age from 55 years to 60 years in view of the appointment letters prescribing the age of retirement as 55 years.

We have already held above that once the appellant had agreed to withdraw the earlier petition and had clearly stated that they will approach the Certifying Officer, this plea cannot be agitated at this stage that the agreement provided for retirement at 55 years and that the same has to be considered and the Certifying Officer was, therefore, not competent to consider the question as to what should be the retirement age. The only plea available to the appellant was in case no due opportunity was given to them to place their case before the Certifying Authority, which is not so. A perusal of the order passed by the Certifying Officer mentioned above also shows that due opportunity was given to

both the parties and since no such specific plea has been raised in the grounds of appeal, the said plea is not open and the only question is as to whether the order passed by the Certifying Officer suffers from any illegality.

The Certifying Officer has to consider the question of the age keeping in view the life expectancy, the nature of the job, the health of the workmen and other relevant circumstances. This cannot be disputed that the life expectancy or the age presently is above 65 years or so and it has been accepted in various decisions that the life expectancy has risen and in many of the cases, as discussed by the learned Single Judge also, the age has been raised to 60 years. In case there are specific circumstances, which lead to the conclusion that the age of the employees should not be raised from 55 to 60 years, it is for the Certifying Officer to consider as to what are the circumstances which justify that the age should not be raised to 60 years. The learned Single Judge had referred to the clauses relating to the Standing Orders issued earlier, which provide that if there is no such agreed age, the retirement age shall be 60 years. It is clearly provided that the existing age of retirement, as agreed, is to be given effect, but in case there is no agreement or settlement in this regard, the stipulation of age of 60 years would come into play and the Certifying Officer had modified the Standing Orders to hold that the retirement age shall be 60 years.

The learned Single Judge, in its judgment, had referred to some decisions of the Apex Court in which it was held that the present day tendency is to fix the age of superannuation at 60 years, unless the Tribunal feels that the work is particularly arduous or hazardous where the workman may lose efficiency earlier. A reference was made to several decisions where the retirement age was held to be 60 years. The learned Single Judge had also

referred to the recommendations of the Central Pay Commission, but this recommendation of the Central Pay Commission cannot be said to be binding though these can be considered. But the nature of the job, working conditions etc. have to be considered by the Certifying Officer. Therefore, it cannot be said that the age of retirement cannot be less than 60 years but it depends upon the nature of the job, the work involved and other such conditions. Therefore, respondent No.2 had correctly certified the age as 60 years keeping in view all the factors and his satisfaction has to be given effect, who had considered all the relevant facts and, therefore, the order passed by the Certifying Officer did not suffer from any illegality, but the said order was wrongly set aside by the Appellate Authority and, therefore, the order passed by the learned Single Judge setting aside the order of the Appellate Authority does not call for an interference by this Court and as such liable to be upheld.

In view of the above discussion, the appeal filed by the appellant is dismissed. No orders as to costs.

CMP No.617 of 2007:

In view of the final dismissal of the main appeal, this application also stands dismissed and disposed of accordingly.

(V.K. Ahuja), J. **(Deepak Gupta), J.**

November 28,2007.
(TILAK)